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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 DONALD GEORGE FLETCHER,

11 Petitioner,

Case No. 2:03-cv-00366 ALA (HC)

12 vs.

13 SCOTT P. RAWERS, Warden,

14 Respondent.

ORDER

15 \_\_\_\_\_/  
16 On May 29, 2008, the parties were ordered to discuss the applicability, if any, of *Spencer*  
17 *v. Kemna*, 523 U.S. 1 (1998), and *Zegarra-Gomez v. INS*, 314 F.3d 1124, 1126 (9th Cir. 2003),  
18 to the question of whether Petitioner's application for habeas corpus is moot.

19 In *Spencer*, the Supreme Court stated that

20 [o]nce the convict's sentence has expired . . . some concrete and continuing injury  
21 other than the now-ended incarceration or parole -- some 'collateral consequence'  
22 of the conviction -- must exist if the suit is to be maintained . . . . In recent  
decades, we have been willing to presume that a wrongful criminal conviction has  
continuing collateral consequences (or, what is effectively the same, to count  
collateral consequences that are remote and unlikely to occur).

23 523 U.S. at 7-8. In *Zegarra-Gomez*, the Ninth Circuit explained that *Spencer* "discuss[ed] the  
24 case or controversy requirement in the criminal context" of challenging an expired sentence.  
25 314 F.3d at 1126. Pursuant to *Zegarra-Gomez*, *Spencer* requires that in order to challenge an  
26 expired conviction, there must be some collateral consequence flowing from the conviction.

Importantly, “these collateral consequences cannot be presumed.” *Id.*

Both parties addressed the applicability of *Spencer*, but ignored *Zegarra-Gomez*. Instead of alleging specific collateral consequences, they both offered conclusory statements. *See Respondent’s Status Report on Mootness* at 2 (“Petitioner is currently suffering from the restrictions imposed by him upon parole.”); *Petitioner’s Mootness and the Applicability of Spencer v. Kemna Brief* at 2 (alleging that because Petitioner “attacks the validity of his underlying conviction, [he] satisfies the case or controversy requirement”).

The parties have failed to provide the Court with any information regarding the conditions of petitioner’s parole. The Court will not presume that a case or controversy exists. The parties must allege facts that establish Article III jurisdiction.

THEREFORE, the parties are ordered to show cause by June 19, 2008, as to why this case should not be dismissed on grounds of mootness, by way of simultaneous briefs consisting of no more than seven pages.

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DATED: June 12, 2008

/s/ Arthur Alarcón  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation